



Broadcasting Notice of Consultation CRTC 2017-52

PDF version

Ottawa, 24 February 2017

Call for comments on proposed amendments to the standard requirements for on-demand services

The Commission calls for comments on the wording of proposed amendments to certain standard conditions of licence for on-demand services. These amendments would implement certain determinations relating to the provision of community programming stemming from the Commission's revised policy framework for local and community television. Further, they would ensure consistency between the conditions of licence applicable to on-demand services that offer outlets for local expression and the requirements applicable to linear community channels operated by terrestrial broadcasting distribution undertakings.

The deadline for the submission of comments is 3 April 2017.

Introduction

1. In Broadcasting Regulatory Policy 2016-224, the Commission set out its revised policy framework for local and community television. In particular, the Commission announced changes that provide greater flexibility to broadcasting distribution undertakings (BDUs) in promoting local expression through community channels and local programming. The Commission also indicated that it expected BDUs operating community channels to strive to ensure that more of the money they direct to their community channels is spent directly on programming.
2. While many BDUs offer community programming on a linear channel subject to the requirements set out in the *Broadcasting Distribution Regulations*, others offer community programming through on-demand services subject to the standard requirements (i.e., conditions of licence, expectations and encouragements) for such services, set out in Appendix 3 to Broadcasting Regulatory Policy 2016-436. In light of amendments being made to the *Broadcasting Distribution Regulations*, amendments to certain standard conditions of licence for on-demand services are required to ensure consistency between the requirements applicable to community programming on outlets for local expression offered by on-demand services.
3. During the proceeding that led to the issuance of Broadcasting Regulatory Policy 2016-224, the Commission set out its intention to conduct a more systematic and standardized evaluation of compliance by community channels with their regulatory obligations.
4. To facilitate this evaluation, the Commission proposes to amend the standard conditions of licence for on-demand services relating to logs and records to require

licensees to log and submit additional information relating to access television programming, the accessibility of programming, the originality of programming, and the language of programming. These amendments are consistent with proposed changes to section 33 of the *Broadcasting Distribution Regulations*, set out in the appendix to Broadcasting Notice of Consultation 2017-50, also issued today.

5. Other proposed amendments address redundancies and inconsistent wording in certain conditions of licence, as well as definitions for certain terms used in those conditions of licence.

Call for comments

6. The proposed amendments to the standard conditions of licence for on-demand services (additions and deletions), and to the definitions of terms used in those conditions of licence, are set out in bold in the appendix to this notice. The Commission invites comments on the wording of the proposed amendments. The Commission will accept interventions that it receives on or before **3 April 2017**.

Procedure

7. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
8. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
9. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
10. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.

11. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

12. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
13. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
14. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

15. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
16. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

17. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
18. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

19. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
20. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Secretary General

Related documents

- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987, Broadcasting Notice of Consultation CRTC 2017-50, 24 February 2017*
- *Standard requirements for television stations, discretionary services, and on-demand services, Broadcasting Regulatory Policy CRTC 2016-436, 2 November 2016*
- *Policy framework for local and community television, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016*

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010

Appendix to Broadcasting Notice of Consultation CRTC 2017-52

Proposed amendments to the Standard conditions of licence, expectations and encouragements for on-demand services

Standard conditions of licence, expectations and encouragements for on-demand services

General

The following terms, conditions of licence, expectations and encouragements are applicable to all on-demand services, except where an authorization that represents a change from or addition to these terms and conditions is included in any decision pertaining to a particular licence.

Conditions of licence

Adherence to regulations

1. The licensee shall adhere to the *Discretionary Services Regulations*, as amended from time to time, with the exception of sections 2 and 8.

Operation and Control

2. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself. The broadcasting licence cannot be transferred or assigned.
3. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of the programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.

Adherence to various codes

4. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
5. The licensee shall adhere to the *Equitable Portrayal Code*, the *Pay television and pay-per-view programming code regarding violence*, and the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a broadcaster associate in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Wholesale Code, set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.

Exhibition and promotion of Canadian content

7. If feature films are offered, the licensee shall ensure that not less than 5% of the English-language feature films and not less than 8% of French-language feature films available to subscribers in each broadcast year are Canadian.
8. If feature films are offered, the licensee shall ensure that the feature film offering includes all Canadian feature films released in the past 12 months.
9. The licensee shall ensure that not less than 20% of all programming other than feature films available to subscribers in each broadcast year are Canadian.
10. If feature films are offered, the licensee shall ensure that Canadian feature films are promoted to the same extent as non-Canadian feature films.
11. If a bilingual service is offered and a barker channel is provided, the licensee shall ensure that subscribers have access to a barker channel in the official language of their choice.
12. If a barker channel is provided, the licensee shall ensure that at least 25% of the titles promoted each month on its barker channel are Canadian titles.

Contribution to Canadian programming

13. The licensee shall contribute 5% of the service's gross annual revenues to an existing Canadian independent production fund administered independently of its undertaking.

For the purposes of this condition:

- a) if the on-demand service is a "related service," "gross annual revenues" shall be 50% of the total on-demand associated revenues received from customers of the broadcasting distribution undertaking(s) distributing the on-demand service;
- b) if the on-demand service is not a "related service," "gross annual revenues" shall be the total amount received from the broadcasting distribution undertaking(s) distributing the on-demand service.

A "related service" means one in which the broadcasting distribution undertaking distributing the on-demand service or any of its shareholders owns, directly or indirectly, 10% or more of the equity of the on-demand service.

Advertising

14. The licensee shall not include as part of its on-demand offering any program containing a commercial message except under the following circumstances:
- a) The commercial message
 - i) is inserted by the licensee in a program that is obtained from a Canadian programming undertaking that is not a related programming undertaking;
 - ii) is inserted by the licensee in a program that is obtained from a related licensed **Canadian** programming undertaking that has acquired the right to broadcast the program on its linear Canadian programming service(s);
 - iii) was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada; or
 - iv) is included in the licensee's community programming in accordance with sections 30(1)(g), 30(1)(h) and 30(1)(i) of the *Broadcasting Distribution Regulations* (where applicable).
 - b) If the commercial message is included in a program by virtue of paragraphs 14(a)(i), 14(a)(ii) or 14(a)(iv) above, the program's inclusion as part of the on-demand offering must be the subject of a written agreement entered into with the programming undertaking that owns the rights to the program.
 - c) The commercial message complies with the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
 - d) The commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

~~For the purposes of this condition of licence, "related Canadian programming undertaking" means a Canadian programming undertaking of which the licensee and/or an affiliate control more than 10% of the total shares issued and outstanding.~~

15. The licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if:
- a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - b) the commercial message is not designed to promote the general consumption of alcoholic beverages; and
 - c) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages* published by the Commission on 1 August 1996.

Paragraph (b) does not prohibit industry, public service or brand preference advertising.

Programming rights

16. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
17. The licensee is prohibited from offering a non-Canadian subscription on-demand package that is directly competitive with a Canadian linear discretionary service, unless the package is exclusively comprised of live events that do not include any wrap-around programming.

Local expression

18. In regard to local expression:
 - a) Except as otherwise provided in subsections (b) and (c) or under a condition of its licence, if a licensee elects to offer an outlet for local expression, the licensee shall offer the programming at no charge to its subscribers and shall not offer any programming service other than the following:
 - i) community programming;
 - ii) a maximum of two minutes during a 60-minute interval of announcements promoting broadcasting services that the licensee is authorized to provide;
 - iii) a public service announcement;
 - iv) an information program funded by and produced for a federal, provincial or municipal government or agency or a public service organization;
 - v) the question period of the legislature of the province in which the licensed area is located;
 - vi) an announcement providing information about the programming that is to be offered as local expression;
 - vii) a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or activities sold or promoted by the person, if the mention or display is in the course and incidental to the production of community programming relating to the event;
 - viii) an oral or written acknowledgement, which may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;

- ix) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;
 - x) a still image programming service as described in *Exemption order respecting still image programming service undertakings*, Public Notice CRTC 1993-51, 30 April 1993, if the service is produced by the licensee or by members of the community served by the licensee and does not contain commercial messages, other than commercial messages that are contained within the programming service of a licensed radio station; and
 - xi) the programming of a community programming undertaking.
- b) At least 75% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) shall be made available for the promotion of the outlet for local expression and for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.
 - c) A maximum of 25% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) may be made available for the promotion of the services of related programming undertakings, discretionary services, packages of programming services, FM services and additional outlets and for the distribution of information on customer services and channel realignments.
 - d) Whenever a licensee is not offering community programming on the outlet for local expression or is offering as part of its inventory community programming that has no audio component, the licensee may offer as part of its inventory the programming service of a local radio station, other than an educational radio programming service whose operation is the responsibility of an educational authority.
 - e) If a licensee provides time on the outlet for local expression during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

19. The licensee shall

- a) devote to community programming not less than 60% of the programming offered as local expression;
- b) devote at least 50% of the programming offered as local expression to community access television programming;

- c) devote a further percentage up to a total of 50% of the programming offered as local expression to community access television programming, according to requests;
- d) if one or more community television corporations are in operation in a licensed area, make available to them up to 20% of the programming offered as local expression for community access television programming; and
- e) if one or more community television corporations are in operation in a licensed area, make available to each of them, on request, not less than four hours of community access television programming.

The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this condition.

20. The licensee shall

- a) Keep, **in a form acceptable to the Commission**, a program log or a **machine-readable** record of programs offered as local expression in the licensed area and retain **it the log or record** for a period of one year after the latest date on which the program is offered;
- b) enter into the program log or **machine-readable** record of programs the following information for each program:
 - i) the title of the program;
 - ii) the duration of time the program was offered, including the announcements and commercial messages referred to in conditions of licence 18(a)(ii) and (vii);
 - iii) a brief description of the program, including a statement as to whether it is local community programming;
 - iv) the name of the distribution undertaking for which the program was produced and the name of the producer;
 - v) a statement **as to that indicates** whether the program constitutes community access television programming **and identifying the party that has been provided with access;**, and if so,
 - A. the party that has been provided with access and whether that party is a community television corporation, and**
 - B. the name of the individual requesting access, their role in the origination and production of the program, and any relationship with the licensee;**
 - vi) the time of commencement of the announcements and commercial messages referred to in conditions of licence 18(a)(ii) and (vii), the duration and in the case of each commercial message, the name of the person selling or promoting goods, services or activities;
 - vii) **whether the program was offered with closed captioning, audio description or described video;**

- viii) whether the program is an original first-run program; and**
- ix) the language of the program;**
- c) retain a clear and intelligible audiovisual recording of each program offered as local expression in the licensed area for a period of
 - i) four weeks after the latest date on which the program is offered; or
 - ii) eight weeks after the latest date on which the program is offered if the Commission receives a complaint from a person regarding the program or, for any other reason, decides to investigate and so notifies the licensee before the end of the period referred to in paragraph (c)(i).

Accessibility

21. The licensee shall caption 100% of the English- and French-language programs in its inventory, consistent with the approach set out in A new policy with respect to *closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007, with the exception of community access television programming.
22. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall implement a monitoring system to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches the distributor of that signal, in its original form.
23. In regard to the quality of closed captioning:
 - a) for French-language services, the licensee shall adhere to the requirements set out in the appendix to *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012, as amended from time to time; and
 - b) for English-language services, the licensee shall adhere to the requirements set out in the appendix to *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016, as amended from time to time.

Program lists

24. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the programming available on the service. The list must identify each program by program category, language, country of origin, whether captioning and/or video description is available, and whether it is produced by the licensee. The list must also indicate the period of time during which each program was on the server and available to subscribers as well as, if applicable, whether the program is an event, and the time and dates of broadcast.

Aggregate statistical data

25. As part of its annual return to be submitted to the Commission on 30 November of each year, the licensee shall file aggregate statistical data for the broadcast year ending the previous 31 August relating to the following:

- video server capacity or number of channels – current;
- video server capacity or number of channels – projected for the end of the next broadcast year;
- total number of titles offered;
- total number of Canadian titles offered;
- breakdown of titles in both official languages;
- total number of feature films offered;
- total number of Canadian feature films offered;
- total number of orders for Canadian programs;
- total number of orders for non-Canadian programs;
- total number of orders for Canadian feature films; and
- total number of orders for non-Canadian feature films.

Expectations

Programming offering in both official languages

1. The Commission expects the licensee to make its programming offering available to the maximum extent possible in both official languages.

Accessibility

2. If closed captioning is available, the Commission expects the licensee to provide viewers with a closed captioned version of all advertising, sponsorship messages and promos offered in its programming.
3. The Commission expects the licensee to ensure that 100% of original community access television programming is closed captioned.
4. The Commission expects the licensee to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms operated by the licensee, the closed captioning is included.
5. The Commission expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.

6. The Commission expects the licensee to:
 - a) display a standard described video logo and broadcast an audio announcement indicating the presence of described video before the broadcast of each described program; and
 - b) make information available regarding the described programs that it will broadcast.
7. The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel.

Broadcast of adult programming

8. If the licensee broadcasts adult programming, the Commission expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service, as required by the Commission in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.
9. Where applicable, the Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.

On-screen portrayal of ethnocultural minorities, Indigenous peoples, and persons with disabilities

10. The Commission expects the licensee to endeavour through its programming and employment opportunities to reflect the presence in Canada of ethnocultural minorities, Indigenous peoples and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

Employment equity

11. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), licensees with 100 or more employees are subject to the *Employment Equity Act*. If the licensee has from 25 to 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Indigenous peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997.

12. In regard to the implementation of the licensee's employment equity plan, the Commission further expects the licensee to:
- a) ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
 - b) assign a senior level person to be responsible for tracking progress and monitoring results; and
 - c) dedicate financial resources to the promotion of employment equity in the workplace.

Encouragements

13. The Commission encourages the licensee to share aggregate information on viewing of on-demand programs with broadcasters if such information is available.
14. If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Definitions

For the purposes of these conditions of licence and expectations:

"Audio description" refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

"Broadcast year" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*, as amended from time to time.

"Commercial message" has the same meaning as that set out in the *Discretionary Services Regulations*.

"Community access television programming," "community programming," "**community television corporation**," "**related programming undertaking**" and "**original first-run program**" have the same meanings as those set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

"Described video" (also referred to as videodescription or described narrative) consists of a narrated description of a program's main visual elements, such as settings, costumes and body language.

"Linear discretionary service" refers to a discretionary service that presents programming in a scheduled manner.

"Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.

"Wrap-around programming" means any other programming that is offered together with the live event itself (for example, pre-or post-commentaries of the event).